

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 68

DELVAILLE H. THEARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO
PERMIT THE APPEARANCE OF THE LOUISIANA STATE BAR
ASSOCIATION**

The Chairman of the Committee on Professional Ethics and Grievances of the Louisiana State Bar Association has prepared an affidavit in reply to certain statements made in petitioner's opposition to the motion to permit the appearance of the Louisiana State Bar Association, and has asked that this affidavit be filed with the Court. The affidavit is attached as an Appendix, *infra*, pp. 2-5. We take this opportunity to affirm that, without any "pressure" from or solicitation by members of the Grievance Committee, the Solicitor General requested the Committee to undertake the preparation of the brief and the presentation of the oral argument, if the Court should concur.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

SEPTEMBER 1956.

APPENDIX

AFFIDAVIT

STATE OF LOUISIANA,

PARISH OF ORLEANS,

CITY OF NEW ORLEANS.

BEFORE ME, undersigned authority, personally came and appeared JAMES G. SCHILLIN, Chairman, Committee on Ethics and Grievances of the Louisiana State Bar Association, who, being duly sworn, deposes and says that, relative to the opposition of Delvaille H. Theard, petitioner, to the request by the Solicitor General that the Bar Association be allowed to file a brief and make an oral argument in this case, the Committee cannot permit to go unchallenged the misstatements of fact contained in petitioner's opposition.

That the aforesaid Committee, which is an arm of the Supreme Court of Louisiana in all disbarment matters, has no personal animus whatever against petitioner; that said Committee in the discharge of its duty to the Court, the profession, and the general public, brought about the disbarment of petitioner, the State Court entering a unanimous decree, which decree is made a part of the present proceedings in the Federal Courts.

That the Disbarment Committee has denied and will continue to deny until a Court of last resort of competent jurisdiction holds otherwise, that petitioner has been disbarred in the State Court solely because he had the misfortune of becoming mentally ill. This is apparent from the following quotation from the State Court decision (72 So. (2) 315):

"Petitioner herein (the above named Committee) excepts to that part of the Commissioner's report which holds that respondent 'was suffering under an exceedingly abnormal condition, some degree of insanity'. It alleges, in its exception, 'that, on the contrary, the evidence abundantly shows that he deliberately and consciously, and with malice of forethought, attempted to simulate and feign, and did so simulate and feign, the genuine signature of the alleged makers of the mortgage note, which he now admits was forgery.' However, in view of the conclusion reached and hereinabove declared, we need not determine the Committee's exception."

Notwithstanding this unambiguous finding, petitioner has the temerity to proclaim in his application to this Court for writs (p. 7, petitioner's application):

"In other words, defendant was disbarred strictly and only because he had suffered, many years previously, (and despite complete recovery) from the illness of mental derangement."

The State decree has merely pretermitted the question of petitioner's sanity in resolving its final conclusion that insanity is not a defense in a disbarment action. The distinction is important for the reason that, if Your Honors conclude insanity is a proper defense to a Federal disbarment action, the issue of petitioner's sanity *vel non* remains yet to be adjudicated in the Federal Court.

That petitioner has indulged in certain gratuitous and baseless charges against the Committee, both in the Courts below and in his opposition to the Committee's appearance in this Court (pp. 2, 3, 4, petitioner's opposition), particularly in his unfounded assertion that the Solicitor General has been "pressured" by a few members of the Grievance Committee,

whereas the fact remains, as can be corroborated by the Solicitor General, that without solicitation the Committee has been requested, in event the Court concurs, to prepare the brief and make the oral argument before Your Honors.

The Committee was expressly requested by the United States Attorney to participate in the proceedings below, not as a formal party (for there are no formal parties in disbarment actions in the Federal Courts), but because of the Committee's acquaintance with the subject matter.

That the District Court did not permit Mr. Schillin, the Chairman of the Committee, to appear as an individual, as stated by petitioner, but expressly permitted the Committee through its Chairman, to appear, the Court making the following observation (p. 23 of the attached transcript of proceedings):*

"THE COURT. * * * to give you (Mr. Theard) ten days in which to show cause why his name should not be removed from the role of attorneys authorized to practice before this court. In due course the matter came on for hearing. At that time, Mr. Theard appeared and argued in his own behalf. The United States Attorney's office was represented by Mr. Hepburn Many, Assistant United States Attorney and Mr. James G. Schillin *as a member of the Committee of Professional Ethics and Grievances of the Louisiana State Bar Association* also appeared and argued the matter as a friend of the court although at that time no formal order was entered authorizing Mr. Schillin to appear and argue before the court as a friend of the court. The court so considered his appearance. The court will now enter a formal order granting Mr. James G. Schillin of the Committee of Professional

*The transcript of proceedings has been lodged with the Clerk of the Court.

Ethics and Grievances the right to appear in this matter to assist the court therein." (emphasis ours).

That petitioner's suggestion (opposition brief, p. 4), that "the Chief Judge indicated marked astonishment at the presence of the Committee in the case" has no foundation in fact and is totally untrue.

That, merely to illustrate the further inaccuracies of petitioner's representations to this Court, we note that it is stated in his opposition to the appearance of the Committee (opposition p. 3) that under the State Constitution only *wilful* misconduct is a ground for disbarment whereas Your Honors will see that Louisiana Constitution, Art. 7, Sec. 10, Par. 1 (cited in petitioner's application, p. 4, and quoted as a footnote in his reply brief to the Solicitor General (p. 11)) makes no mention of the word "wilful," the provision being that the Supreme Court "shall have exclusive original jurisdiction in all disbarment cases involving *misconduct* of members of the Bar with power to suspend or disbar under such rules as may be adopted by the Court."

JAS G SCHILLIN,
*Chairman, Committee on
 Professional Ethics and Grievances
 of the Louisiana State Bar Association.*

Sworn to and subscribed before me this 5th day of September 1956.

MICHAEL M. IRWIN, *Not. Pub.*